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CASES CITED

STATUTES CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

FRED P. WEISSMAN, an Individual d/b/a FRED P. WEISSMAN COMPANY, FRED P. WEISSMAN COMPANY, a Corporation,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the Sixth Circuit

To the Hon. Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

STATEMENT

The petitioners, Fred P. Weissman, an individual doing business as Fred P. Weissman Company, and Fred P. Weissman Company, a corporation, do hereby petition this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on the 29th day of November, 1948, pursuant to written opinion filed on said date. This opinion is reported in 170 Fed. (2d) page 952 January 17, 1949 Adv. Sheets, and its Docket number on the records of said Court of Appeals is 10,536.

1. Petitioner, Fred P. Weissman Company, is now a corporation engaged in the manufacture of women's coats at its plant near Harrodsburg, Mercer County, Kentucky.

Prior to December 1, 1945, this business was operated by Fred P. Weissman, an individual, doing business as Fred P. Weissman Company. All of the alleged unfair labor practices involved in these proceedings are asserted to have occurred before December 1, 1945.

2. Respondent, National Labor Relations Board, is an agency of the United States created by an Act of Congress July 5, 1935, c. 372, 74th Cong. 1st Session (29 USCA sec. 151, et. seq.) and as amended by an Act of Congress June 23, 1947, c. 120, 80th Cong. 1st Session (29 USCA--1948 CAPP, sec. 151, et. seq.)

3. Respondent, National Labor Relations Board, on August 28, 1947, filed its petition in the United States Circuit Court of Appeals for the Sixth Circuit, seeking enforcement of its order directing petitioners to cease and desist from discouraging membership in a labor organization, interfering with, restraining, or coercing employees in the exercise of the right to self organization and to take other steps as directed by said order which appears at page 2 of the Transcript of Record herein.

4. On November 29, 1948, said Court of Appeals entered a decree which recited that "it is now ordered, adjudged and decreed by this Court that the decree of the National Labor Relations Board be, and the same is, enforced."

On December 20, 1948, petitioners filed their petition for rehearing and on January 3, 1949, said petition was denied. On January 24, 1949, said Court of Appeals entered an order staying mandate in this action sixty days

from said date pending application of petitioners to the Supreme Court of the United States for Writ of Certiorari and further providing that, if said application is made within said time, the said stay shall operate until final disposition of this case in the Supreme Court.

REASONS FOR THE ALLOWANCE OF THE WRIT

The Court of Appeals for the Sixth Circuit has decided an important question, specified below, arising under federal law, to-wit: National Labor Relations Act, which has not been, but should be, clearly settled by the Supreme Court of the United States. The Court of Appeals has decided another important question of federal law, also specified below, in a way which is in conflict with applicable decisions of the Supreme Court of the United States.

1. The National Labor Relations Act neither protects nor justifies illegal and unlawful attempts of a Labor Union to drive an employer out of business under the guise of a bona fide effort to lawfully organize his employees and the Board in the instant case was without jurisdiction to entertain the Union's complaint.

2. The Court of Appeals erroneously construed the decisions of the Supreme Court in the cases of *National Labor Relations Board* v. *Donnelly Garment Company*, 330 U. S. 219, and *National Labor Relations Board* v. *I. & M. Elec. Co.*, 318 U. S. 9, so as to require that Court to affirm the findings of the Board in the instant case by a decree actually in conflict with the decisions of this Court in the Donnelly and Electric Company cases, supra.

It is submitted that the questions herein presented by your petitioners for Writ of Certiorari are of sufficient importance to be reviewed by this Court.

PRAYER FOR WRIT

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari issue directed to the United States Court of Appeals for the Sixth Circuit commanding said Court to certify and send to this Court a full and complete Transcript of the Record and of the proceedings of said Court of Appeals had in the above-styled action; that said action be reviewed and determined by this Court as provided by the statutes of the United States and that the decree of said Court of Appeals herein be reversed by this Court and for such further relief as the Court may deem proper.

Dated: Lexington, Kentucky. March 12, 1949.

FRED P. WEISSMAN, an individual doing business as Fred P. Weissman Company and Fred P. Weissman Company,

Petitioners,

By .....

Counsel for Petitioners.

STOLL, KEENON & PARK,
602 Bank of Commerce Bldg.,
Lexington, Kentucky,
Of Counsel.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

We have already set out in the petition a statement of the grounds on which the jurisdiction of this Court is invoked and have specified the errors claimed by the petitioners.

STATEMENT

We shall now briefly recite in the order of errors assigned the particular facts of this case which we believe to be material to the consideration of the questions presented.

1. We think we can say that the evidence presented for petitioners showing that the Union's sole purpose was to

drive the employer out of business is practically undenied in the record. The oral testimony on this point may be found at the following page citations in the Transcript of Record: 301, 307-308, 310, 317-318, 356, 358, 394, 457-458. The uncontradicted printed evidence on this point in the form of handbills and pictorial posters widely circulated by the Union may be found at page 527, et. seq. of said Transcript.

According to the record, while petitioners had their plant in Cincinnati, the Union beat up women workers, threw rocks through the windows of cars operated by employees, invaded the home of Weissman and issued a warning that he leave town. At the plant's New York sales room, acid was thrown on samples and much damage inflicted; David Solomon, a high Union official, warned the plant employees that they had better give up their jobs and that before the Union got through with Weissman, he "would be selling peanuts on the East side of New York City." (R. 308). Many of the Union pickets were arrested and convicted in the Police Court of Cincinnati, but conditions became so intolerable that Weissman was forced to move his plant to Lawrenceburg, Indiana. At its new location, the plant was immediately besieged by the Union. Employees were threatened with personal violence and actually excluded by force from the premises. Here, Solomon reiterated that Weissman would not be permitted "to operate in Lawrenceburg, Cincinnati, or anywhere else." (R. 356).

In a short time, the illegal and wrongful acts of the Union were again successful and Weissman was driven out of Lawrenceburg, Indiana. Then he tried to establish his plant at Harrodsburg, Kentucky. The Union followed

him there. Once more its representatives profanely declared that they came for the purpose of putting Weissman "out of business." (R. 394, 457-458). Their attorney appeared upon the scene and announced that "Weissman's days are numbered in Harrodsburg." (R. 358).

While the citizens of that town and community were considering a plan to erect a building which could be occupied by the Weissman plant and thus afford jobs for unemployed inhabitants of Harrodsburg and Mercer County, the Union distributed printed handbills and posters falsely and libelously warning the citizens of Harrodsburg that Weissman would bring felons, gunmen and gangsters into their midst; that he would not pay his debts; that local workers would never be satisfied in Weissman's employ; that other communities had rejected him; that he was utterly unreliable and, therefore, from every aspect a positively undesirable character.

It is the contention of petitioners that the Union never made any bona fide effort to organize Weissman's plant, but that its sole purpose, as revealed by its actions referred to above, was to compel his complete retirement from the business in which he was then engaged.

2. In the cases of *National Labor Relations Board* v. *Donnelly Garment Company*, 330 U. S. 219, and *National Labor Relations Board* v. *I. & M. Elec. Co.*, 318 U. S. 9, the Court of Appeals erroneously held that the Supreme Court in reversing the Circuit Court of Appeals for the Eighth Circuit in the former case and the Circuit Court of Appeals for the Sixth Circuit in the latter case, sustained the practices of the Labor Union complained of in the case at bar. Thus the Court of Appeals decided, as we believe, an important question involving the National

Labor Relations Act in a way which conflicts with said decisions of this Court.

ARGUMENT

We shall, as concisely as possible, under this heading attempt to state our argument in support of our contentions with respect to errors assigned.

The oral testimony heretofore cited and the handbills which are set out in full in the record at the place specifically indicated, cannot possibly be reconciled with any effort or purpose on the part of the Union to *organize*—even by violence—petitioners' employees. We submit that no Union that ever had any desire whatsoever to form an organization of workers for Weissman would have driven him from one place to another, thereby destroying the jobs of the workers as each plant was forced to close. Certainly no sort of organizational campaign can be reconciled with the Union's deliberate and persistent efforts to discredit and smear the employer to such an extent that the business men and civic leaders at Harrodsburg would cancel the building project and wash their hands of Weissman, thus depriving workers of employment and the Union of members.

We have never heard of any Union being formed where there was no place to work and no employees to organize.

We submit that the "right of employees to organize and bargain collectively," the encouragement of "practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions" are intended to be, and are, in fact, so stated to be—the fundamental objects and purposes of

the National Labor Relations Act and that the Board has no jurisdiction over any phase of employer-employee relationship, except that which specifically relates to a "labor dispute."

We argued before the Trial Examiner, and before the Board, and before the Court of Appeals, and we contend now, that an undenied attempt to drive an employer out of business violates the basic spirit of the Act and strips such conduct on the part of the Union of any semblance of a "labor dispute." It is well settled, of course, that the existence of a "labor dispute" is positively necessary before the National Labor Relations Board can acquire jurisdiction over any employer-employee relationship. But, strange as it may seem, the vital question as to whether a Labor Union's effort to ruin an employer and drive him completely out of business by physical force, slander and libel involves a "labor dispute" has never been decided, so far as we are able to ascertain, by this Court. Indeed, we have not found where such question has been decided by any of the courts of inferior federal jurisdiction, unless—as we very much fear may be the case if this petition is denied—the opinion and decree of the Court of Appeals for the Sixth Circuit in the case at bar should hereafter be cited in support of a contention in the affirmative. And, at this point, our argument relating to the first assignment of error necessarily shades into the second one.

We believe that upon brief consideration, this Court will be convinced that the Court of Appeals in the instant case has construed the Donnelly case and the Electric Company case in a way which is definitely contrary to what these decisions actually hold.

In the Donnelly case, the respondent contended that the Union had been guilty of such misconduct as to "deprive the Board of its jurisdiction to conduct the inquiry," but it was not seriously contended that the controversy was not a "labor dispute," nor claimed that the Board had no jurisdiction over "labor disputes." On the other hand, the "International's" acts of violence admittedly occurred in connection with and as a part of the Union's attempt to organize Donnelly's employees. In our case, however, we desire to emphasize the fact that the misconduct of the Union—no claim being made by it that any of the activities complained of were engaged in for the purpose of organizing the employees—is utterly unassociated with a "labor dispute." There is not one scintilla of testimony in the whole record of this case that any of these undenied acts of violence were committed in an effort to organize Weissman's workers into a Union.

Therefore, we cannot believe that this Court in the Donnelly case intended to hold—as the Court of Appeals seems to assume—the acts of violence committed for the purpose of driving an employer out of business constituted a "labor dispute." Likewise, we cannot believe that this Court intended to hold in Donnelly that the National Labor Relations Board has any right to take jurisdiction in any case where the record shows—as the Court of Appeals expressly found in our case—that "there is considerable evidence which would have justified the Board in refusing to entertain and proceed upon the charges filed against the respondents because of bad faith and unlawful motives on the part of the Union." ("Proceedings" 88).

What has been said with respect to the Donnelly case applies with equal force to that part of the Electric Company case which deals with the common issue now under consideration. In Donnelly the Court pointed out with reference to the Electric Company case that while "the circumstances of the two cases" were different, "they have in common an accusation of grave misconduct against a complainant before the Court." It is evident that this Court regarded these two cases as having another common factor, that the violence, however illegal and wrongful—was connected with a "labor dispute" and was, therefore, entitled to consideration under the special rules, regulations and decisions applicable to "labor disputes," which nowhere exists in any form whatsoever in the present case.

CONCLUSION

In conclusion, we earnestly insist that the vital question as to whether a Union can by sabotage and intimidation, by force and violence drive an employer out of business under cover of the National Labor Relations Act—though the mere statement of this proposition ought to answer it —is still as a matter of law an open one which should be settled now—once and for all—by this Court. We say, further, that the Court of Appeals in the instant case has decided adversely—and as we believe reluctantly—to the petitioners only because it has misconstrued the opinions of this Court in the Donnelly and Electric Company cases and, in doing so, has decided a question arising under federal law in a way that is in conflict with the decisions of this Court.

For the foregoing reasons, we urge upon this Court that the Writ of Certiorari prayed for in the petition

herein be granted and that upon consideration of this case the decree of the United States Court of Appeals be reversed.

Respectfully submitted,

FRED P. WEISSMAN, an individual doing business as Fred P. Weissman Company and Fred P. Weissman Company,
Petitioners,

By Richard C. Stoll
Counsel for Petitioners.

STOLL, KEENON & PARK,
602 Bank of Commerce Building,
Lexington, Kentucky,
Of Counsel.